Institute of International Bankers

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April 8, 2020

By Electronic Mail

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219.9

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Re: Joint Notice of Proposed Rulemaking to Modernize Community Reinvestment Act Rules: OCC Docket ID OCC–2018–0008 and RIN 1557–AE34; FDIC RIN 3064–AF22

Ladies and Gentlemen:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the notice of proposed rulemaking[1] from the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC" and together with the OCC, the "Agencies") soliciting comments on a proposal to modernize the regulations[2] implementing the Community Reinvestment Act of 1977 ("CRA").[3] The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches and agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. A substantial number of our members operate insured depository institutions as

1 Proposal to Modernize Community Reinvestment Act Rules, 85 Fed. Reg. 1204 (proposed Jan. 9, 2020). In this letter, we refer to the text of the notice of proposed rulemaking as the "Proposal".

2 See 43 Fed. Reg. 47,144 (Oct. 12, 1978).

3 Codified at 12 U.S.C. § 2901 *et seq*.

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well as federal branches licensed by the OCC whose deposits are insured by the FDIC, making them subject to the CRA.

We support the goal of the CRA "to encourage banks to meet the credit and deposit needs of communities that they serve, including low- and moderate-income communities, consistent with safe and sound operations,"[4] especially through the development of innovative, flexible and responsive financial products and services. In furtherance of this goal, we continue to believe that the Agencies should work in coordination with the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"), as they have in the past, in any ultimate rulemaking to ensure consistency across the banking agencies and across the regional offices within each agency.

We also support the Agencies' goals in the Proposal to simplify, increase transparency, and reduce the burdens of compliance with respect to the CRA. However, implementing the proposed metrics-based approach requires care to avoid creating negative unintended consequences. Specifically, any framework should allow for tailoring to different banks' business models and no institution should risk being downgraded in its CRA evaluation solely as a result of adopting the metrics-based approach.

While this letter will highlight several key issues of particular importance to international banks that operate wholesale banks[5] in the U.S., a substantial number of our members operate insured depository institutions and branches that engage in retail banking activities. There are many other issues that are important to our members that operate retail banks and branches, including, among other issues, the Proposal's new data requirements, the valuation methodology for qualifying retail loans, and the disincentives the Proposal creates for making smaller-scale loans, investing in affordable housing, and engaging in other CRA-eligible activities. Many of the concerns of those members are addressed in the comment letters of other

4 U.S. DEPARTMENT OF THE TREASURY, MEMORANDUM FOR THE OCC, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FDIC: COMMUNITY REINVESTMENT ACT - FINDINGS AND RECOMMENDATIONS, 1 (Apr. 3, 2018).

5 In this letter, "wholesale banks" is intended to include wholesale banks and branches and limited purpose banks and branches.

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trade associations, industry groups and individual institutions. The IIB generally endorses those letters.

I. The Proposed General Performance Standards Should Not Apply to Wholesale Banks

Many of our members are wholesale banks. Although FDIC-insured, wholesale banks generally serve large, institutional customers and do not have retail customers or provide retail products. However, they still provide significant services and financing to the communities they serve. In our view, any assessment framework should continue the current practice of evaluating wholesale banks in a manner that accommodates their different business models.

Currently, wholesale banks are evaluated under a community development test, which evaluates an institution's record of meeting the credit needs both within and outside of the bank's assessment area(s) through community development lending, qualified investments, or community development services.[6] The Proposal would eliminate the community development test and establish new general performance standards which would assess two fundamental components of a bank's CRA performance: (1) The distribution (i.e., number) of qualifying retail loans to low- and moderate-income individuals, small farms, small businesses, and low- and moderate-income geographies; and (2) the impact of a bank's qualifying activities, measured by the value of a bank's qualifying activities relative to its retail domestic deposits.[7] The distribution tests are required when only 20 loans of a particular product line are originated in an assessment area over a multi-year evaluation period.

As proposed, the general performance standards would be a one-size-fits-all CRA evaluation measure that is ill-suited for wholesale banks. For example, in the Proposal, the definition of a "retail loan" is so expansive that a single loan made by a wholesale bank to an existing high net-worth client as an accommodation would constitute retail lending. Even though such accommodation loans are consistent with the wholesale bank designation, the bank would

6 *See* 12 C.F.R. § __.25.

7 85 Fed. Reg. 1209.

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be evaluated as if it were a retail bank. As wholesale banks are unable to offer home mortgages, small business loans, and other types of traditional consumer credit to the general retail market, these banks would likely be unable to satisfy the distribution tests without drastically changing their core business models.

For these reasons, the general performance standards should not apply to wholesale banks. Rather, the community development test should be retained for these institutions. The community development test recognizes the non-traditional business models of wholesale banks and has enabled these banks, over the last 25+ years, to respond to the needs of low- and moderate-income communities through tailored lending, investing, and service initiatives that utilize their core capabilities and products.

If the Agencies do not retain the community development test for the evaluation of wholesale banks, wholesale banks should be allowed to propose an alternative measure for any test that is not applicable to their business model.

II. The Proposal's Requirements for Strategic Plans do not Align with the Business Models of Wholesale Banks

The Proposal retains a strategic plan option for all banks with business models that could not be effectively evaluated under the proposed objective framework. The Proposal notes that this option would be available, for example, to banks that do not have retail domestic deposits or small banks that do not originate retail loans.[8] However, it is unclear how existing wholesale banks that cannot be evaluated under the general performance standards would be able to transition to the strategic plan option without significant administrative burden and/or a complete change in the means by which they meet their CRA requirements. Strategic plans require significant administrative resources to draft, guide through the community engagement process, and monitor over time. Moreover, the requirements for the strategic plan do not align with many of the business models of wholesale banks.

[8] Id.

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Under the existing strategic plan requirements, banks must submit a strategic plan that addresses investments, lending, and services. This option is intended to allow for differentiation of banks based on their size, location, and business model. However, because the Proposal would also change the calculation for services, a key means by which many wholesale banks meet their CRA obligations, the Proposal puts many wholesale banks at a disadvantage.[9] Specifically, the Proposal provides that community development services would be credited at the value of the hourly salary as estimated by the Bureau of Labor Statistics for the job category of the service provided for the number of hours provided. This method undervalues volunteering services. Many international banks have limited staff in the United States and would not be able to sufficiently increase volunteer hours to make up the difference between the value of services under the Proposal versus under the current methodology. Adding additional investment activities is also a challenge for international banks as the opportunities for community development deals are very competitive, especially in the New York area where the U.S. offices of many international banks are located. Moreover, the Proposal is silent on how certain community development services which currently qualify for CRA credit (e.g., providing international remittance services and maintaining weekend hours that improve low- and moderate-income individuals' access to financial services) will be treated going forward. These activities are very important to the communities that receive them and excluding or undervaluing them would be inconsistent with the policy objectives of the CRA. Our members rely on the ability to provide responsive community development services to meet their CRA obligations. Volunteer and other services provided by banks can provide meaningful support to communities. The value of these services may vary greatly from community to community and do not lend themselves easily to a monetary value metric. As such, the current methodology for giving credit for these types of activities should be retained.

Additionally, the Agencies should confirm that banks currently operating under approved strategic plans may continue to operate under those existing plans, without the need for re-approval, until the plan comes up for renewal. Moreover, banks operating under approved strategic plans should not be subject to recordkeeping and reporting requirements contained in

[9] Moreover, as discussed in more detail below, the Proposal would make strategic plans more challenging to develop and fulfill by requiring those plans to cover deposit-based assessment areas.

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the Proposal related to the general performance standards or data covering qualifying activities not measured in the bank's strategic plan. Unnecessarily adding the additional burden to banks will not improve CRA outcomes.

III. The Designation of Deposit-Based Assessment Areas is not Appropriate for Wholesale Banks

We support the Agencies' efforts to reduce the number of CRA "hot spots" (areas where there are more banks that want to engage in community development activities than there is need for those activities) and CRA "deserts" (areas where there is a great need for community development activities but few banks that engage in those activities). However, as proposed, the "deposits-based" assessment area approach cannot reflect the unique business models of wholesale banks and would create unintended negative consequences including further concentrating CRA "hot spots" and adding uncertainty into the assessment area designation and CRA planning processes for wholesale banks.

The Proposal would require banks to delineate additional, non-overlapping deposit-based assessment areas where they have significant concentrations of retail domestic deposits. Specifically, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas would be required to delineate deposit-based assessment areas where it receives five percent or more of its total retail domestic deposits, based on the physical addresses of its depositors.[10] Retail deposits, as defined in the Proposal, would include institutional and corporate deposits including from multinational companies, which are core clients for many IIB member banks.[11] These are not the deposits of individuals, households, or small businesses who live, work, or operate in a distinct community. Rather, they are likely the product of a corporation's national or global operations with only a nominal nexus to the depositing corporation's "physical address". Moreover, many corporate headquarters are located in well-banked cities rather than in CRA "deserts," further contributing to the concentration of assessment areas in large cities. A bank that takes a significant amount of

[10] Id. at 1208.

[11] Id. at 1242.

deposits from a multinational corporation headquartered outside the bank's facility-based assessment area could be required to add a deposit-based assessment area in a geographic location to which the bank has no connection to or engagement with and may not have a real need for additional CRA investment. Additionally, corporate and institutional deposits tend to be large, and the addition, loss, or shift of several such deposits could drastically alter a bank's assessment areas from exam to exam and even from quarter to quarter. Given the centralized structure of wholesale banks, many may be unable to oversee a bank's CRA program in a new assessment area and engage with local communities, especially if its assessment areas remain in flux. For these reasons, the deposit-based assessment area approach should not be applied to wholesale banks.

IV. The Proposal Raises Several Concerns for Retail Banks and Branches Engaged in Retail Activities

As mentioned at the outset of this letter, a substantial number of our members operate insured banks and branches that engage in retail activities. Many of the concerns of those members are addressed in other comment letters, which letters the IIB generally supports. That said, we would like to briefly highlight several key points that are important to our members that operate retail banks and branches:

- The Proposal acknowledges that data has not yet been developed to permit the calculations required for the proposed CRA evaluation measure, for the retail lending distribution tests, and for determination of the deposit-based assessment areas.[12] For example, peer and industry-wide information for the denominators of several of the retail lending distribution tests are currently unavailable. Systems to generate at least some of that information have not yet been developed at many if not most banks, and they will require substantial time and resources to build those systems. These data limitations make compliance with the Proposal's potential data and reporting obligations highly problematic. Moreover, they could result in higher costs for lenders to conduct CRA activities, and could reduce resources for CRA-related loans, investments, and services.

[12] Id. at 1222.

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The Agencies should re-assess the Proposal's data requirements to ensure that they will achieve the goals of the Proposal and are, in fact, necessary to encourage banks to serve their communities. The Agencies should not finalize a rule until after they have provided lenders with a definitive understanding of the data that lenders will be required to compile and report, and how, exactly, that data will be used by the Agencies to evaluate performance.

- The Proposal's CRA evaluation measure methodology provides full valuation for each month that loans and investments are carried "on-balance sheet." However, for retail loans that are sold within 90 days of origination, 25% of the value of the loan is included, equivalent to considering the loans as being "on-balance sheet" for a full 90 days or 25% of a year. This provision may have been intended to provide for equivalent CRA evaluation measure credit regardless of whether a loan is sold immediately after origination or held for as many as 90 days. However, in practice the importance of a bank's efforts to originate otherwise qualifying retail loans would be significantly devalued, making it much more difficult for banks to meet the key CRA evaluation measure thresholds for both assessment areas and the bank as a whole. As an alternative, we recommend that the Proposal be revised to provide credit for 100% of the value of a qualifying loan in the year of origination. For subsequent years following origination, only on-balance sheet loans would be included in the CRA evaluation measure calculation. This approach will (i) allow banks to retain strategic flexibility in managing their assets, (ii) enhance, rather than limit, their ability to meet community needs, and (iii) retain, rather than discourage, their incentive to originate qualifying loans because, once a loan has been extended and a consumer's need for credit has been satisfied, the bank's strategy for managing the asset has no impact on the community.

- To reach the minimum thresholds for a satisfactory or outstanding performance rating under the CRA evaluation measure for individual assessment areas and the bank as a whole, banks may need to seek out large-dollar loans and investments, which in turn would dis-incentivize them from making smaller-scale loans and investments that may have disproportionately positive effects on low- and moderate-income communities. The Agencies should consider including a multiplier for smaller loans and investments that

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are specifically targeted at community development or that involve both low- and moderate-income individuals and neighborhoods as a way to mitigate the disincentive for banks to devote attention on smaller CRA-friendly loans and investments.

- The Proposal would eliminate the separate investment test, and shift to a ratio evaluation approach in which many more types of activities qualify for CRA credit. Taken together, these changes could reduce lenders' incentive to make investments in affordable housing and other CRA-eligible activities. With investments and debt financing pooled, banks would weigh the benefits of investments against debt in determining which CRA-qualifying activities to pursue. In general, debt financing takes place over a shorter duration, and is less complex and more liquid than tax credit investments, making it a more desirable alternative. For these reasons, there is likely to be a substitution effect of loans or other types of CRA activities that are less impactful on capital charges, replacing equity investment in affordable housing and other CRA-eligible activities. Further, by permitting more activities to qualify for CRA credit – for example, investments in infrastructure or facilities that "partially", rather than primarily, benefit low- and moderate-income persons and communities – the Proposal could have the effect of diminishing the beneficial impact of CRA activities. For these reasons, the Proposal should be revised to (i) require that, in order to receive a satisfactory or outstanding rating, lenders must, to meet their community development obligations, undertake a minimum amount of investments or loans that directly benefit low- and moderate-income persons and communities, and (ii) limit the list of qualifying activities within the community development test, including by removing only "partially" rather than primarily benefit low- and moderate-income people and communities.

V. No Matter How the Metrics-Based Approach Is Implemented, No Downgrades Should Result.

As noted above, we commend the Agencies' efforts to impose a framework for the CRA to increase transparency and reduce regulatory burden, which will help banks more effectively serve the needs of their communities. In order to ensure this goal is achieved, no matter how the Proposal is implemented, no bank's CRA rating should be downgraded solely as

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a result of the new approach. For example, if a bank currently has a CRA rating of Outstanding, the transition to the new approach should not cause the bank to immediately lose that rating simply due to the application of the new metrics-based approach.

We recommend that the Agencies employ one of two alternative methods to reduce unintended consequences: (1) a type of "floor" based on current ratings, which could be phased out over time, to protect against downgrades as a result of the new approach; or (2) a delayed compliance period. The floor to protect against downgrades as a result of the new metrics-based approach would provide regulatory certainty to banks in this time of transition. This mechanism would also allow banks to maintain prudent lending standards and promote bank safety and soundness. The second alternative would involve a gradual adjustment period during which the new metrics-based approach is phased in over time. This would ensure banks have sufficient time to comply with the new regulatory regime. Also, as noted above, the Agencies should confirm that banks currently operating under approved strategic plans may continue to operate under those existing plans, without the need for re-approval, until the plan comes up for renewal.

Banks and community organizations alike have invested considerable time and effort in the activities that they undertake under the CRA. Given the importance of CRA to low- and moderate-income neighborhoods, it is critical to analyze carefully the likely effects of any proposed changes on the ability of banks to provide each unique community with access to the credit, services and community development they need and, at the same time, to avoid creating negative unintended consequences. The Agencies should revisit and revise the Proposal so that it continues to encourage banks to meet the credit and deposit needs of communities in ways that best leverage their individual business models and provide the best outcomes for the communities that they serve.

In closing, it bears mentioning that these comments have been submitted in the midst of the COVID-19 pandemic, which has created massive economic disruptions and dislocations in the United States, including among low- and moderate-income persons and in the communities where they live and work. Our members, like lenders across the United States, are deeply engaged in current efforts to mitigate the harsh impacts of this pandemic on the

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customers, clients, and communities they serve. These efforts have been undertaken in many cases in conjunction with and with the support of the Agencies, the Federal Reserve, other federal agencies, and state and local authorities. Even as efforts to minimize the suffering caused by the pandemic continue, there is hard work ahead to restore the economy to its previous strength. For that reason, while we certainly understand the Agencies' interest in modernizing the CRA, the Proposal should not be finalized without a full assessment of the impact of the pandemic on the people and communities the CRA is intended to serve, and a careful determination of how the CRA can best meet its objectives in a post-pandemic economy.

* * *

We appreciate your consideration of our comments on the Proposal. If we can answer any questions or provide any further information, please contact our Chief Executive Officer, Briget Polichene (646-213-1147, bpolichene@iib.org) or the undersigned, Stephanie Webster (646-213-1149, swebster@iib.org).

Very truly yours,

Stephanie Webster
General Counsel